

Question 1: How should Ofcom manage the process of taking advice from users, regulators and government on efficient apportionment of AIP fees in the maritime and aeronautical sectors? Are any new institutional arrangements needed?:

Cabinet Office guidelines on consultation are best practice in this area. Such use would ensure you were clear about your policy objective and set out options which could be compared with doing nothing.

Before that it will be important that you understand the effect of increased costs within the aviation sector and recognise where you may have safety responsibilities you fully understand and accept the consequences. It would be instructive to analyse a do nothing option and to consider the future efficiency of VHF com efficiency in each case as we believe that the outcomes will be the same.

Question 2: If you consider that our proposals for pricing ground station users for any spectrum would be likely to have a detrimental impact on safety, please let us know. In order for us to understand your assessment fully, it would be helpful if you could outline the mechanisms whereby this might happen.?:

Unlicensed aerodromes are able to equip with ground VHF com radio stations depending on their situation and business decision. The CAA is currently consulting on releasing aerodromes which are licensed for the purposes of flight training only from the requirement to be licensed which would bring them into line with other EU nations, ready for the transfer of regulation to EASA. In this situation all aerodromes, other than those licensed for public transport of passengers, have the option to offer a VHF com service or not. There is no obligation in regulation to require this.

Of approximately 310 aerodromes in the UK, only about 35 could properly be called airports, places where passengers use tickets to board scheduled and charter aircraft. There are some 145 licensed aerodromes in total and about 155 unlicensed aerodromes plus several hundred landing sites, farm strips and gliding sites. Of the 155 unlicensed aerodromes, 87 operate VHF com services.

It seems likely that a 25kHz channel for a small aerodrome will double the total licensing costs and several aerodrome owners have told us that, especially in the current economic circumstances, that would be unaffordable. They would have to forego VHF com or become insolvent.

The landscape of GA aerodromes in the UK is fragile. There is barely enough parking and hangarage to accommodate all the small aircraft registered in the UK so the closure of even a small number of aerodromes would be a crisis. Whilst aerodromes which are very quiet can manage without radio, those that are moderately busy need radio to ensure deconfliction of aircraft. If the pricing is at such a level that aerodromes have to forego VHF com or close, the risk to aircraft will increase

Question 3: Do you have any evidence which indicates that AIP charged to ground stations could have a material detrimental impact on UK competitiveness?:

If charging is sufficient to increase risk, operations in UK airspace will become less safe than in other EU airspace. Parking and hangarage for aircraft in the UK is under significant pressure so if charging is sufficient to close aerodromes, aircraft will have to be sold abroad. The UK light aircraft market would collapse if there was no place to park newly purchased aircraft severely disadvantaging UK businesses.

Manufacturers and supply chain businesses would close or move abroad.

Flight operations in the UK which are elective, such as recreational and commercial training, are already under pressure to relocate abroad. The cost of regulation here far exceeds that in other EU countries and elsewhere in the world.

The majority of this industry has already moved abroad, just last month the Oxford Aviation Academy announced a second overseas training site. With the introduction of EASA regulation over the next year, there will be free movement of licensing within the EU removing the final requirement for part of this activity to be carried out in the UK. The proposed Ofcom charging may be the final nail, the UK may become wholly uncompetitive in the flight training marketplace and industry will effectively end.

Question 4: Taking into account the information available in this document, including that set out in Annex 5, our initial views on VHF radiocommunications licence fees and on the reference rates for bands in other uses, and any information you have about the organisations to whom we are proposing to charge fees, please provide any evidence that you think is relevant to us in considering the financial impact of the fees we intend to propose for VHF radiocommunications, or for other uses:

We understand that the reference fee proposed for VHF Com channels is based on a ?whole UK FIR? coverage model and that where a channel is reused within the UK, some scale factor will be applied. It will be necessary to develop an algorithm to take account of the various arrangements that exist and we believe that the CAA are best equipped to deal with that.

See answers to the previous questions for other aspects of these issues.

Question 5: Do you agree that there is little to be gained, in terms of economic efficiency, from charging AIP to WT Act licences for aircraft:

There is nothing to be gained from this. As there is free circulation of aircraft in and through the UK it seems inappropriate to charge an additional fee to aircraft that happen to be registered in the UK.

Moreover we believe that aeronautical WT Act licences should be priced in the same way as maritime licences as the renewal process does not involve any airworthiness input; it is just an administrative process incurring no other cost.

Question 6: Do you consider that we should discount fees for any particular user or type of user? Specifically, do you consider that there should be a discount for charities whose object is the safety of human life in an emergency:

Where communications are used to ensure safety of life, any opportunity cost should be set at zero. Where charities are involved, it is bad government to force volunteers and donors to contribute to fees which pass to treasury and particularly which sustain the operations of OFCOM.

It is and would be immoral for OFCOM to extract its own operating costs (and profits as declared in its annual report) from charitable donations made in good faith by members of the public. If it does this OFCOM stands the risk of significant adverse publicity especially in time of economic hardship when charities will find funding difficult.

Question 7: Do you agree that Ofcom should apply AIP to ground stations? use of maritime and aeronautical VHF radiocommunications channels, to help manage growing congestion in current use and to ensure that the cost of denying access to this spectrum by potential alternative applications is faced by current users?:

I restrict my comments to the aeronautical sector only. However the proposal in question 7 is not the proposal in the consultation.

The aeronautical VHF bands are set and managed by international agreements and all equipments must conform to the international standards. In the UK this is carried forward into law through the Air Navigation Order. It is not possible for government, regulator or users to deviate from these rules and standards because of the safety critical nature of the sector. You raise some specific sub-questions:

AIP will have no affect whatsoever in the short, medium or long term management of congestion. Frequencies are managed on an international basis and although there may not be sufficient channels worldwide, there is no congestion as such because of the mechanism for allocation of which you are aware. Users have no means to influence ICAO and in any case the UK is insignificant in this area.

Alternative uses of the aeronautical band are not permitted by international agreement so there is no cost to face. As an alternative user may not use any channels for other purposes, they would have no value. In his report Professor Cave recognised this when he wrote in Chapter 6 of his report that:

If there is judged to be no prospect of alternative use due to international restrictions and since the UK is unable to act unilaterally in spectrum that is internationally harmonised for on-board use, then the opportunity cost of the spectrum for alternative use should be judged to be zero.

While I understand that you do not agree with this analysis by Professor Cave, we would point out that the recommendations have been agreed by Government and this

statement is one of the pillars on which his recommendations were made. In your consultations you consider the definition of opportunity cost in Paragraph 3.19 where you offer 2 options:

1. That which takes account of the effect of constraints introduced by regulatory policy (e.g. the fact that the spectrum is allocated on an exclusive basis) and thus considers only those alternative uses that can be accommodated within these constraints,
2. That which does not take account of these constraints, but considers all alternative uses that are technically feasible, ignoring constraints imposed by regulatory policy or international agreement.

You go on in paragraph 3.21 to say that:

We choose therefore to consider the second of the definitions of opportunity cost....

Your choosing to ignore regulatory policy and international agreement is a clear attempt to make a charge where none is due. We believe that this would be outside your legal authority and it therefore follows that the action of choosing to apply this definition is also outside that authority.

As Professor Cave noted, the UK cannot act unilaterally so the imposition of fees cannot tend to increase spectrum efficiency so releasing spectrum to other use or users. The opportunity cost should be set at zero in this case.

In the aeronautical spectrum, the frequency would be reallocated elsewhere by international agreement and be used by another nation at no cost to them. By this means UK aviation would be denied a resource which would make our overall activity less efficient in operational, safety and economic terms.

Question 8: Do you agree with our initial view that it would be appropriate to apply a pricing system similar to that already existing for Business Radio licences to maritime and aeronautical VHF communications? If not, what are your reasons for proposing that we should develop a fee structure for maritime and aeronautical VHF channels which is distinct from that already established for Business Radio?:

I refer you my response to question 7 which clearly shows the distinction between the nature of aeronautical communications and business radio and the particular constraints that apply. Unlike aviation, business radio can trade and change use and technology. Even MOD is in a position to directly influence NATO on VHF com operational requirements. Civil aviation is clearly quite different and you should not try to bend economic theory to force it to pay a charge which is ruled out by the government's expert report. You should and indeed must take this forward on the basis of Professor Cave's audit as directed by Government.

Question 9: Are there any short term reasons specific to the sector(s) why it would be inappropriate to apply fees from April 2009?:

The present economic situation demands that all policy decisions taken by Government and regulators take full account of the likely consequences. Even spending the management time and resources on these consultations is damaging the economy of the UK at a time when businesses should be fully focussed on survival.

Your preferred outcome would add substantial costs to the UK aviation industry for no tangible benefit for Industry or the Nation. Because aviation is an international business that moves easily across borders, the competitiveness of UK PLC will be damaged and foreign businesses will reap the benefits of lower relative costs.

You have told us that if the economic conditions are not right now you would nonetheless proceed and set charges to be deferred to a particular date. Faced with increased costs to come, Industry will reposition itself to minimise those costs to enable it to recover in the coming years.

You have said that you want to tidy this business away so that Ofcom is seen to be operating in a professional manner. Frankly I expect our regulators to take a broader view than that in these difficult times.

Question 10: Ofcom would welcome stakeholders' views on the factors which should be taken into account when apportioning fees between individual users of radars and racons:

I have no opinion on this question

Question 11: Do you agree with our initial view that a reference rate of £126k per 1 MHz of national spectrum for L band and S band radar spectrum would achieve an appropriate balance between providing incentives to ensure efficient use of spectrum while guarding against the risks of regulatory failure in setting the reference rate too high? If you consider a different rate would be more appropriate, please provide any evidence that you think we should take into account.:

I have no opinion on this question

Question 12: Do you agree with our initial view that a reference rate of £25k per single MHz of national spectrum would be appropriate for deriving fees for licences to use X band radar?:

I have no opinion on this question

Question 13: Do you agree that, generally, spectrum used by aeronautical radionavigation aids is currently uncongested? Do you believe that this may change during the next few years and, if so, approximately when?:

I have no opinion on this question

Question 14: Do you agree with the basis on which Ofcom has arrived at its initial view on reference rates for aeronautical radionavigation aids?:

I have no opinion on this question

Comments:

The VHF radio spectrum has demonstrably no legal or safe alternative use and therefore has no economic cost. I am very concerned that your proposal is therefore based on flawed precepts and in addition to being of questionable legality, it threatens the safety and viability of both current and future aviation operations in the UK.

This consultation has already diverted resources away from many who are working hard to simply to stay in business. I believe that this consultation should be suspended until economic growth has been re-established.

You must certainly should now report to Government that now is not the time to apply these costs.